

**See Teow Guan & Ors v
Abdul Jabbar bin Abdul Majid & Anor
(See Teow Chuan & Ors intervening)**

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO D1–
24–43 OF 1997

SELVENTHIRANATHAN J

2 JUNE 1999

Companies and Corporations — *Winding up* — *Liquidators* — *Failure to carry out duty* — *Liquidators fail to determine ownership of disputed shares* — *Whether relevant in determining wishes of contributories* — *Whether contributories meeting valid*

The defendants were the liquidators of Kian Joo Holdings Sdn Bhd ('the company') which was wound up by consent upon petition by the plaintiffs. The plaintiffs disputed the distribution of voting rights in respect of 144,000 shares ('the disputed shares') registered in the name of the first intervener which the plaintiffs alleged should be shared amongst all entitled members of the See family. The plaintiffs therefore applied for, inter alia: (i) a declaration that the resolution passed at the contributories' meeting held on 12 July 1996 be declared invalid on the ground that the defendants have failed to settle the list of contributories as required by r 67 of the Companies (Winding-up) Rules 1972; and (ii) that no further meetings of contributories are to be held pending the outcome of the defendants settling the list of contributories so that the number of votes each contributory is permitted to vote can be first established.

Held:

The application of the plaintiffs has merit as it is obvious from the exhibits that the liquidators had not performed their functions adequately by enquiring into the complaints of the plaintiffs. The determination of the ownership of the disputed shares would be relevant in determining the wishes of the contributories in deciding how best to deal with the assets of the company. Instead, the liquidators had went on to announce the decision on the voting without making any adjustment in respect of the disputed shares (see p 367F–H).

[Bahasa Malaysia summary]

Defendan-defendan adalah penyelesai-penyelesai Kian Joo Holdings Sdn Bhd ('syarikat tersebut') yang telah digulungkan dengan kebenaran melalui petisyen oleh plaintif-plaintif. Plaintif-plaintif telah mempertikaikan pemberian hak-hak mengundi berkenaan dengan 144,000 syer ('syer yang dipertikaikan tersebut') yang didaftarkan di atas nama pencelah pertama yang plaintif-plaintif katakan sepatutnya dibahagikan antara semua ahli-ahli yang berhak dalam keluarga See. Oleh itu, plaintif-plaintif telah memohon, antara lain: (i) suatu

- A** deklarasi bahawa resolusi yang diluluskan di mesyuarat penyumbang-penyumbang yang diadakan pada 12 Julai 1996 diisytiharkan sebagai tidak sah atas dasar bahawa defendan-defendan telah gagal untuk menyelesaikan senarai penyumbang-penyumbang seperti yang diperlukan oleh k 67 Kaedah-Kaedah (Penggulungan) Syarikat 1972 dan (ii) bahawa tiada mesyuarat lanjutan penyumbang-penyumbang boleh diadakan sehingga defendan menyelesaikan senarai penyumbang-penyumbang supaya jumlah undi-undi yang dibenarkan untuk setiap penyumbang dapat dipastikan.
- B**

Diputuskan:

- C** Permohonan plaintif-plaintif mempunyai merit kerana adalah jelas daripada ekshibit-ekshibit bahawa penyelesaian-penyelesaian tidak melaksanakan tugas-tugas mereka dengan cukup dalam menyiasat aduan plaintif-plaintif. Penentuan milikan saham-saham yang dipertikaikan tersebut adalah berkaitan dalam menentukan permintaan para penyumbang di dalam menentukan cara terbaik untuk menguruskan aset-aset syarikat. Sebaliknya, penyelesaian-penyelesaian telah mengumumkan keputusan mengenai pengundian tanpa membuat apa-apa penyesuaian berkenaan dengan saham-saham yang dipertikaikan (lihat ms 367F-H).]
- D**

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Notes

For cases on liquidators, see 3 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 745-766.

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Cases referred to

See *Teow Guan & Ors v Kian Joo Holdings Sdn Bhd & Ors* [1995] 3 MLJ 598 (refd)

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Legislation referred to

Companies Act 1965

Companies (Winding-up) Rules 1972 r 67

Isabella de Silva (*Iza Ng Yeoh & Kit*) for the plaintiffs.

DP Naban (*Karen Wilfred and Shirlena Yogeswaran* with him) (*Lee Hishamuddin*) for the defendants.

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VK Lingam (*Peter Raj* with him) (*PI Raj & Co*) for the interveners.

Selventhiranathan J: By encl (8) which amended encl (1) in this originating summons, the plaintiffs sought the following reliefs:

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- (1) a declaration that the resolution passed at the contributories' meeting held on 12 July 1996 be declared invalid on the grounds that the defendants have failed to settle the list of contributories as required by r 67 of the Companies (Winding-up) Rules 1972 and/or allowed

- parties concerned to use the votes in respect of 144,000 shares in dispute and/or that the defendants have prima facie accepted that See Teow Chuan is the legal and/or beneficial owner of the 144,000 shares in dispute and/or that See Teow Chuan is the legal and/or beneficial owner of the disputed shares belonging to Patrick See; **A**
- (2) that no further meetings of contributories are to be held pending the outcome of the defendants settling the list of contributories as required by r 67 of the Companies (Winding-up) Rules 1972 so that the number of votes each contributory is permitted to vote can be first established; **B**
- (3) that pending the final disposal of the plaintiffs' appeal to the Court of Appeal against the order of this court dated 12 June 1995 in the Kuala Lumpur High Court Companies (Winding-up) No D4-28-294-94 the defendants be restrained from exercising the power of sale and/or transfer contained in s 236(2)(c) of the Companies Act 1965 or any other power of sale and/or transfer in respect of the Kian Joo Can Factory Bhd's [sic] 40,941,276 ordinary shares and 5,698,835 warrants and/or any other assets of Kian Joo Holdings Sdn Bhd ('the company') whether movable and/or immovable; **C**
- (4) that no sale of the 40,941,276 ordinary shares and 5,698,835 warrants in Kian Joo Can Factory Bhd registered in the name of the company shall be made until all the shares and warrants registered in the names of nominees but belonging to the company are recovered in full; **D**
- (5) further or such other relief as this court deems fit; **E**
- (6) that the costs of the plaintiffs be taxed on solicitors and clients scale and [be] paid for out of the assets of the company.

The defendants are the liquidators of Kian Joo Holdings Sdn Bhd ('the company') which was wound up by consent upon petition by the plaintiffs herein vide the High Court in Malaya at Kuala Lumpur Companies Winding-up (Petition) No D4-28-294-1994 on 30 January 1996. Prior to the winding-up order, upon the application of the respondents in the petition, prayer 4(a) therein 'that there be a distribution in specie of the shares and investments' of the company had been struck out. The petitioners appealed to the Court of Appeal against the decision to strike out the said prayer 4(a), which appeal is pending hearing. **F**

In support of their claim for relief herein, the plaintiffs alleged that, after being appointed, the liquidators had failed to prepare a list of the contributories of the company as well as ascertain the number of shares or extent of interest of each contributory as they are required to do under r 67 of the Companies (Winding-up) Rules 1972 ('the Rules'). This had caused the plaintiffs who were holding 43.73% of the share capital of the company being denied their right to make an application to the court to vary the list in respect of 144,000 shares of the company which were in dispute and registered in the name of See Teow Chuan (the first intervener) who had further transferred the same to See Teow Chuan Holdings Sdn Bhd (the second intervener) whereas the said shares should properly have been **G**

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- A** shared amongst all the entitled members of the See family (para 8 of encl (2)).

B The plaintiffs also alleged that the manner in which the liquidators treated the shares in dispute for voting purposes at the contributories' meeting of 12 July 1996 was not in compliance with the provisions of the Companies Act 1965 ('the Act'). In the winding-up petition, the petitioners had alleged that See Teow Chuan had not given any explanation in respect of shares acquired by him with the company's money. The liquidators, however, did not take any step to investigate this allegation of the petitioners but, instead, merely presented a report to the court that 'no further enquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof as the company was wound-up with the consent of the petitioners and the respondents' (paras 8 to 11 of encl (2)).

D Apart from that, the liquidators were also alleged to have failed to take any action in respect of 1,800,000 more of the company's shares which were also in dispute as the said shares, which were registered in the name of HSBC (S) Nominees Pte Ltd had been utilized by See Teow Chuan to obtain a personal loan (para 15 of encl (2)).

E The plaintiffs further alleged that the voting carried out at the contributories' meeting was invalid due to several irregularities (paras 16 and 17 of encl (2)). The liquidators were also alleged not to have taken into account the plaintiffs' interest in the matter as they appeared to be keen to dispose of the shares and warrants of the company although the same were well traded on the Kuala Lumpur Stock Exchange and despite the fact that a decision on the distribution of the assets of the company in specie was pending in court (paras 18 to 24 of encl (2)).

F Looking at the supporting affidavit encl (2) in its entirety, I am of the view that the application of the plaintiffs in encl (8) has merit as it is obvious from the exhibits therein that the liquidators had not performed their functions adequately by enquiring into the several complaints of the plaintiffs (see para 10 of encl (2)). This is particularly so in relation to the reliefs sought by paras 1 and 2 of encl (8). The determination of the ownership of the shares in dispute would be relevant in determining the wishes of the contributories in deciding how best to deal with the assets of the company. I am fortified in my view based on the liquidators' own reaction to the issue of the shares in dispute as can be seen at paras 40 to 53 of exh '6' of encl (1) setting out the minutes of the meeting of the contributories held on 12 July 1996. Contrary to what had been indicated earlier by the liquidators, at the end of the meeting, the liquidators nevertheless went on to announce the decision on the voting without making any adjustment in respect of the disputed shares.

I Apart from what has been mentioned, I refer to para 9(a) of exh 'AJ-3' in the liquidators' affidavit at (4) where it stated that in the event there had been any misconduct in the exchange of shares of Box Pak Bhd and Kian Joo Can Factory Bhd, as alleged, and should the contributories' respective entitlements be thereupon adjusted, any effect on the distribution of voting power amongst the contributories would be marginal.

Although the liquidators contended that the effect on the voting power would be marginal, this contention seemed to confirm the plaintiffs' allegation that if adjustments were made to the voting power on the shares, the decision on the sale of the assets of the company could well vary as the resolution to sell the assets was only carried by a small majority. Again, the liquidators failed to show how the distribution of voting power would have been marginal as against the plaintiffs' contention that it would have been otherwise as stated in para 8 and illustrated in exh '5' of encl (1).

However, with respect to the prayers sought by paras 3 and 4 of encl (8), I was of the view that no order should be made in terms thereof as the effect of the application in relation thereto would be to stay the winding-up proceedings of the company, the attempt at which had already been dismissed by the Court of Appeal.

Having regard to the foregoing, I made an order in terms of prayers 1 and 2 of encl (8) with no order on the remaining prayers. I also ordered that the costs of this application to be paid out of the assets of the company.

Additionally, for the avoidance of doubt, the parties were given the liberty to apply to the winding-up court concerned in accordance with the provisions of the Act and subsidiary legislation made thereunder, in accordance with the judgment of the Court of Appeal reported as *See Teow Guan & Ors v Kian Joo Holdings Sdn Bhd & Ors* [1995] 3 MLJ 598.

Order accordingly.

Reported by Loo Lai Mee

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